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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA TUCSON DIVISION**

DAVID CONNELLY,

DEBTOR AND PLAINTIFF

vs.

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, FOR THE BENEFIT OF
HARBORVIEW MORTGAGE LOAN
TRUST 2005-3,

AND DOES 1-1000
DEFENDANTS

Case No: 09-33553-TUC-EWH

Adversary No: 11-ap-00088-EWH

**MOTION TO APPROVE EMPLOYMENT
CONTRACT BETWEEN DEBTOR AND
ATTORNEY FOR REPRESENTATION
TO ATTEMPT TO ESTABLISH
PRIMARY LIEN ON RESIDENCE
INVALID AND RELATED ACTIONS
AND APPLICATION FOR APPROVAL
OF PAYMENT TO ATTORNEY OF
INITIAL RETAINER**

CHAPTER 13

Ronald Ryan, Attorney for Debtor in the main bankruptcy case and in Adversary Proceeding, Case 4:12-ap-00100-EWH ("Attorney"), applies to the Court for approval of the Employment Contract Between Debtor and Attorney.

PLEASE BE ADVISED THAT FIFTEEN (15) DAYS FROM THE DATE HEREOF, ATTORNEY DEBTOR WILL LODGE AN ORDER APPROVING THIS MOTION IF NO OBJECTION AND/OR TO REQUEST FOR HEARING IS FILED TO THIS MOTION. THIS MOTION MAY BE DEEMED UNOPPOSED AND AN ORDER MAY BE ENTERED GRANTING THE RELIEF REQUESTED. ANY SUCH OBJECTION OR REQUEST FOR HEARING SHOULD BE SERVED UPON THE UNDERSIGNED COUNSEL.

The Employment Contract is for Representation to Attempt to Establish Primary Lien on Residence Invalid and Related Actions and Application for Approval of Payment to

1 Attorney of Initial Retainer.¹

2 1. On 12/29/2009, Debtors commenced a proceeding under Chapter 13 of
3 the Bankruptcy Code. The Employment Contract involves work that is in addition to that
4 work included in the fees approved for representing Debtors in the main bankruptcy
5 case, as set forth in that "Order Approving Attorney Application for Attorney Fees," at
6 doc 29, filed 05/10/10, and entered 05/10/10. Attorney services included in said Order
7 included:
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9 A) The service included in said Order was the Adversary to avoid the
10 purported secondary lien claim on residence real estate, which has
11 been filed as Adversary No: 4:10-ap-02292-EWH, that was
12 successfully concluded in "Order Avoiding Secondary Lien" at doc
13 12, filed 03-30-11, and entered 04-01-11.

14 B) A limited amount of work defending against enforcement of the
15 purported 1st lien on Debtor's residence, which has been in large
16 part responsible for holding off the mortgage claimant and
17 potentially saved the Debtor and the estate a large sum to date.
Additionally, some of the work performed to date included in said
Order included several requests for information from relevant
parties, various investigations, any loan modification efforts to the
extent the same was attempted.

18 The Agreements between Debtor and Attorney and said Order included provisions that
19 there would or could be additional hourly charges for work to challenge the validity of
20 any primary lien claim when such efforts exceeded the amount that fees in said Order
21 could reasonably include.
22

23 2. The Debtor has entered into an Employment Contract with Attorney
24 Ronald Ryan for services beyond those included in the above bankruptcy Order, to
25 represent him in an offensive action to attempt to establish that Debtor does not now,
26 and never did owe any money to defendant ("U.S. BANK N.A. AS TRUSTEE, FOR THE
27

28 ¹ Said Contract is attached as Exhibit A.

1 BENEFIT OF HARBORVIEW MORTGAGE LOAN TRUST 2005-3"), nor any servicer or
2 collection agent on behalf of defendant. The action also includes an attempt to establish
3 that the mortgage note and primary lien are not now and never were owned by
4 defendant, and that defendant does not now and never did own a mortgage security
5 interest on Debtor's residence, as may have been originally established by the
6 promissory note in the amount of \$273,523.00, and deed of trust, both executed on or
7 about March 29, 2005, in a mortgage loan transaction wherein ComUnity Lending, Inc.
8 dba Paradigm Home Lending ("ComUnity" or "Lender"), acted in the role of "Lender"
9 pursuant to the Deed of Trust recorded on March 31, 2005, with the Pima County
10 Recorder at Docket 12521, Page 9100 ("DOT").
11
12

13 3. This representation includes an Adversary Proceeding Complaint in
14 Adversary Case 4:12-ap-00100-EWH, that has been prepared and filed, including
15 service of summons and complaint that has been successfully accomplished, and may
16 include refiling of the case in an outside of bankruptcy civil suit, to establish the extent
17 and validity of a lien, quiet title action, declaratory relief action, and alternative claim for
18 credit for third party payments to which Debtor would be entitled to be credited under
19 the express contractual provisions of the DOT, statutory law and common law, if
20 defendant did in fact own Debtor's mortgage note and mortgage. The services to which
21 the Employment Contract relate include other and additional substantial preliminary
22 work beyond that described above, already performed to further investigate the merits
23 of said case, the underlying facts, relevant documents, pertinent publications, and
24 research of applicable law.
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27 4. Other legal services, such as appeals and other lawsuits, with the
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1 exception of the refiling of this case in another Court, must be the subject of separate
2 agreements;

3 5. The Debtor is a real estate agent, who had on his own obtained
4 independent knowledge of cases involving the challenge to securitized mortgages, prior
5 to retaining Attorney. He has made careful and diligent inquiry and is satisfied that
6 Attorney is qualified and competent to represent Debtor in this case.
7

8 6. Debtor proposes to compensate the attorney as provided in the
9 agreement, subject to the approval of the Court.
10

11 7. Attorney has no connection with the Debtors creditors, or any other party
12 in interest or their respective attorneys or accountants.

13 8. Attorney is cognizant of the need to balance the interests of Debtor and of
14 the estate. In this regard, Attorney has made it possible for perhaps the bulk of his fees
15 pursuant to the Contract, if any, to be paid over a period of months or years after the
16 conclusion of this case. On the other hand, Debtor has the right to independently
17 pursue litigation outside of bankruptcy even while a Debtor in a Chapter 13 case. This is
18 true regardless of whether the litigation has any potential to benefit the estate. In this
19 case it has benefitted the estate, and potentially may do so further. A Chapter 13 Debtor
20 may use post-petition income to compensate professionals, such as accountants
21 routinely in the ordinary course of business. Post-petition income may also be used by
22 Chapter 13 Debtors to compensate attorneys for non-bankruptcy related legal services,
23 and may also use post-petition income to directly pay attorneys for complex litigation
24 performed in bankruptcy court. On the other hand, the estate has an interest in
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1 disposable income.²

2 9. Debtor was offered the choice of two separate attorney fee structuring
3 options:

4 A) The first option was that Attorney would be paid at a straight hourly
5 rate of \$225 per hour, with a minimum retainer in the amount of
6 \$5,000.00, plus costs; or

7 B) Or in lieu of the above hourly rate being strictly applied, Debtor was
8 given the alternative of paying an up-front, minimum flat rate
9 retainer of \$5,000.00, plus 15% of the amount that the loan
10 principal on the Residence is reduced by the conclusion of this
case, **if at all**, whether by way of contested litigation or by way of
settlement.

11 Debtor has opted for fee structure B.³

12 10. During this case, Debtor has deposited periodic payments over a long
13 period of time into Attorney's Trust Account.

14 11. Debtor requests that the Court approve Attorney Ryan to pay himself the
15 minimum retainer of \$5,000.00 from his Trust Account.

16 12. Attorney has made it possible for perhaps the bulk of his fees pursuant to
17 this Contract, if any additional are to be recompensed, to be paid over a period of
18 months or years after the conclusion of this case. Accordingly, the Agreement provides,
19 "To the extent said fee cannot reasonably be paid during the pendency of this Chapter
20 13 case, it may be paid after this case has ended."

21 WHEREFORE, the Debtor-Plaintiff and Attorney respectfully request that this
22

23
24
25 ² The disposable income issue is less important when a Debtor has a 60 month
26 plan, as in this case, because Debtor is not required to have a plan lasting more than 36
monhths.

27 ³ Payment of an up-front, minimum flat rate retainer of \$5,000.00, plus 15% of
28 the amount that the loan principal on the Residence is reduced by the conclusion of this
case, **if at all**, whether by way of contested litigation or by way of settlement.

1 Honorable Court enter an order:

- 2 A) Approving the Employment Contract between Debtor and Attorney;
3 B) Approve Attorney Ryan to pay himself \$5,000.00 from his Trust
4 Account.

5 RESPECTFULLY SUBMITTED April 10, 2012.

6
7 Respectfully submitted,
8 /s/ Ronald Ryan
9 Ronald Ryan, Plaintiff's Counsel

10 **CERTIFICATE OF SERVICE**

11 Service was had by regular mail upon all those parties in interest in the attached mailing list.

12 and by email upon Chapter 13 Trustee; Debtor/Plaintiff, DAVID CONNELLY AND
13 ELIZABETH; and those Attorneys below on April 10, 2012.

14

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23 /s/ Ronald Ryan
24
25
26
27
28

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